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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0289**

State of Minnesota,
Respondent,

vs.

David Edward Williams, Jr.,
Appellant.

**Filed April 1, 2019
Affirmed
Cochran, Judge**

Washington County District Court
File No. 82-CR-17-290

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Peter Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County
Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant David Edward Williams, Jr. challenges his conviction of attempted
first-degree murder, arguing that his guilty plea was not accurate because he testified to a

lack of memory of certain details of his crime, necessitating a *Norgaard* plea, rather than a standard guilty plea and that the record does not support a finding that he acted with premeditation. Because the record contains a sufficient factual basis to support his guilty plea, we affirm.

FACTS

On January 23, 2017, Williams was charged with a variety of crimes against his parents arising from an incident two days earlier. The state later amended the complaint to charge Williams with attempted first-degree murder of his mother and second-degree assault of his father. Williams pleaded guilty to attempted first-degree murder and the state dismissed the second count. Williams testified about the incident and the events that led up to it during his plea hearing.

Williams moved out of his parents' home in the summer of 2016. He was upset that he had been receiving medication to treat bipolar disorder since childhood. At some point, Williams requested that his parents provide him a list of all the people responsible for medicating him as a child. Williams refused to give his parents a reason for his request.

In December of 2016, Williams bought a 12-gauge shotgun and ammunition. Shortly thereafter, Williams threatened his mother and his parents changed the locks to their home, which upset Williams. On January 20, 2017, Williams went to his parents' home, and his father turned him away because of circumstances involving his mother.

The next day, Williams went to his parents' home with a large duffel bag containing the 12-gauge shotgun, ammunition, a baseball bat, knives, a hatchet, and duct tape. When he arrived, his mother was the only person at the home. Williams entered the house and

spoke with his mother. While standing behind his mother, Williams told her that he was going to hurt her. Williams's mother told police that he hit her in the head repeatedly with a hammer, and medical records indicate that she suffered severe injuries. Williams did not deny that he hit his mother in the head with a hammer, but he testified that he could not remember doing so. At some point, Williams's mother got away from him and he chased after her, caught her, and directed her to sit in a chair. Williams's mother told police that he duct-taped her hands while she sat in the chair, but Williams testified that he did not remember that. However, Williams agreed that while his mother was duct-taped, he slapped her in the head and threatened to throw her down the stairs if she was not quiet. Williams also agreed that he was holding a knife and a hatchet at that time.

Williams then contacted his father. He positioned his mother so that the first thing his father would see upon coming home was Williams's mother, sitting in a chair and bleeding from her head injuries. Williams loaded the 12-gauge shotgun, which his mother heard. When Williams's father arrived, Williams pointed the loaded 12-gauge shotgun at him.

Williams admitted that he repeatedly threatened to kill his mother, his father, and himself while at the house that day. Williams also agreed that prior to going to the house he had made the decision that either his mother had to die or he would kill himself. Williams ultimately let his parents leave and they went to the hospital. Following a standoff with a SWAT team, Williams surrendered and was arrested.

During his plea hearing, Williams agreed that his actions constituted a substantial step towards attempted first-degree murder and that he acted with premeditation. The

district court found that Williams provided a sufficient factual basis to support his guilty plea to first-degree murder. The district court ultimately convicted Williams and sentenced him to a 240-month sentence. This appeal follows.

DECISION

Williams seeks to withdraw his guilty plea, arguing it was not accurate. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a court must permit a defendant to withdraw a guilty plea, even after sentencing, if it is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. A manifest injustice occurs if a plea is not valid; to be valid, a plea must be accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. We review the validity of a guilty plea de novo. *State v. Johnson*, 867 N.W.2d 210, 214-15 (Minn. App. 2015), review denied (Minn. Sept. 29, 2015).

The accuracy requirement is intended to protect a defendant from pleading guilty to a charge more serious than he could be convicted of if he went to trial. *Williams v. State*, 760 N.W.2d 8, 12 (Minn. App. 2009), review denied (Minn. Apr. 21, 2009). To be accurate, a guilty plea must be supported by a proper factual basis. *Raleigh*, 778 N.W.2d at 94. The factual-basis requirement is satisfied if the record contains credible evidence which would support a jury verdict that the defendant is guilty of the crime to which he pleaded guilty. *Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016).

A factual basis is usually established by asking the defendant to explain the circumstances of the crime in his own words. *Williams*, 760 N.W.2d at 12. Where the defendant is unable to do so because of “absence of memory on the essential elements of

the offense,” a factual basis may be established through a *Norgaard* plea in which the defendant acknowledges that the state has sufficient evidence to obtain a conviction. *Id.*; see also *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867, 871-72 (1961). A *Norgaard* plea is accurate if it is supported by a strong factual basis and the defendant “specifically acknowledge[s] on the record at the plea hearing” that the evidence the state would likely present against him is “sufficient for a jury, applying a reasonable doubt standard, to find [him] guilty.” *Johnson*, 867 N.W.2d at 215 (quotation omitted). This acknowledgment is a critical component of an accurate *Norgaard* plea. *Williams*, 760 N.W.2d at 12-13.

Here, Williams pleaded guilty to attempted first-degree murder under Minn. Stat. § 609.185(a)(1) (2016), which requires that a person “causes the death of a human being with premeditation and with intent to effect the death of the person or of another.” A person attempts to commit a crime when he intends to commit the crime and “does an act which is a substantial step toward, and more than preparation for, the commission of the crime.” Minn. Stat. § 609.17, subd. 1 (2016). Williams does not dispute that he acted with intent to commit the crime. Instead he argues that (1) evidence that he hit his mother in the head with a hammer cannot be considered because it was not properly admitted as a part of a *Norgaard* plea, (2) the record is insufficient to support a finding that he took a substantial step toward first-degree murder, and (3) the record is insufficient to support a finding that he acted with premeditation. We address each argument in turn.

I. Williams’s testimony that he hit his mother in the head with a hammer cannot be used to support the guilty plea because it was not properly admitted as part of a *Norgaard* plea.

Williams argues that because he testified that he did not remember hitting his mother in the head with a hammer, that fact could only support his guilty plea if he had entered a *Norgaard* plea. We agree. When a defendant testifies to a lack of memory of an essential element of a crime, the defendant must acknowledge that the state’s evidence is sufficient for a jury to find him guilty. *Johnson*, 867 N.W.2d at 215. This extra layer of protection is necessary because the defendant’s plea is based on the state’s evidence, rather than his own memory. *See id.* (explaining that in a *Norgaard* plea a factual basis “is not established by the defendant’s admissions to the facts alleged in the complaint” but by the defendant agreeing that the state’s evidence is sufficient to convict).

Here, Williams testified that he did not remember hitting his mother in the head with a hammer. Accordingly, Williams’s guilty plea to attempted first-degree murder can only be considered accurate based on that act if it was entered as a *Norgaard* plea. It is undisputed that Williams did not enter a *Norgaard* plea and did not acknowledge on the record that the state’s evidence was sufficient to convict him. Therefore, Williams’s acknowledgment that he hit his mother with a hammer is insufficient to sustain his guilty plea. But this does not end our analysis because Williams admitted to a number of other acts that he remembered.

II. Williams's other actions would support a jury finding that he took a substantial step toward attempted first-degree murder.

A person attempts to commit a crime when he intends to commit the crime and “does an act which is a substantial step toward, and more than preparation for, the commission of the crime.” Minn. Stat. § 609.17, subd. 1. There is no rule as to specific acts that are sufficient to constitute an attempt, rather, “[e]ach case must depend largely upon its particular facts.” *State v. Dumas*, 136 N.W. 311, 314 (Minn. 1912). But the Minnesota Supreme court identified general principles that courts should consider in determining whether a person's conduct constitutes a substantial step toward the commission of a crime:

It may be stated . . . as a general proposition that to constitute an attempt to commit a crime there must be an intent to commit it, followed by an overt act or acts tending, but failing, to accomplish it. The overt acts need not be such that, if not interrupted, they must result in the commission of the crime. They must, however, be something more than mere preparation, remote from the time and place of the intended crime; but if they are not thus remote, and are done with the specific intent to commit the crime, and directly tend in some substantial degree to accomplish it, they are sufficient to warrant a conviction.

Applying these principles, the *Dumas* court held that the defendant's acts of hiring others to start a fire, purchasing supplies and tools to accomplish this aim, and entering the building to be burned, constituted a substantial step toward committing arson. *Id.*

This court has recently addressed the question of what constitutes a substantial step in the context of criminal sexual conduct. Applying the *Dumas* principles, this court held that a defendant took a substantial step toward third-degree criminal sexual conduct where

he engaged in explicit social media contact with a police decoy he believed to be a minor, agreed to engage in sexual penetration with the decoy, and then showed up and knocked on the decoy's door. *State v. Wilkie*, ___ N.W.2d ___, ___, 2019 WL 333483, at *4 (Minn. App. Jan. 28, 2019). This court concluded that, although the defendant did not physically contact the decoy, his other actions nonetheless constituted a “substantial step toward achieving his intended goal—sexual penetration of a juvenile.” *Id.*

Similarly, applying the *Dumas* principles to this case, the record would support a jury finding that Williams took a substantial step toward attempted first-degree murder. Williams showed up to his parents' house with the intent to kill his mother and all the means necessary to do so. He had a shotgun, numerous other weapons, and duct tape. He repeatedly threatened to kill his mother, slapped her in the head while holding weapons, and loaded his shotgun. Williams's actions were not remote in time or place from the intended crime. Rather, Williams put his plan to kill his mother into action. Considering the totality of the circumstances the evidence would support a jury finding that Williams's actions went beyond “mere preparation” and constituted a substantial step toward committing first-degree murder. *See Dumas*, 136 N.W. at 314 (explaining that each case depends on the specific facts of that case that the reasonable inferences a jury may draw from those facts). Accordingly, there is a proper factual basis for this element of attempted first-degree murder. *See Nelson v. State*, 880 N.W.2d 852, 859 (Minn. 2016).

III. Williams's testimony would support a jury finding that he acted with premeditation.

Williams also argues that his plea was inaccurate because his testimony does not support a finding that he acted with premeditation and his testimony was in response to leading and conclusory statements. Minn. Stat. § 609.18 (2016) specifies that premeditation “means to consider, plan or prepare for, or determine to commit, the act referred to prior to its commission.” Premeditation does not require that a specific period of time passes for deliberation, nor does it require proof of extensive plans and preparation to kill. *State v. Cooper*, 561 N.W.2d 175, 180 (Minn. 1997). However, premeditation requires that “after the defendant formed the intent to kill, some appreciable time passed.” *Id.* A defendant's actions before and after the crime are relevant to the question of premeditation. *State v. Leake*, 699 N.W.2d 312, 321 (Minn. 2005).

Minnesota courts have recognized three categories of evidence relevant to infer the existence of premeditation: (1) evidence of planning; (2) evidence of motive; and (3) evidence as to the nature of the (attempted) killing. *State v. Moua*, 678 N.W.2d 29, 40-41 (Minn. 2004). The state need not “present evidence from each of the three categories relevant to premeditation in order to support a finding of premeditation.” *State v. Goodloe*, 718 N.W.2d 413, 420 n.4 (Minn. 2006). Premeditation must be determined based on the totality of the circumstances. *State v. Ulm*, 326 N.W.2d 159, 162 (Minn. 1982). Although the district court “should be particularly wary of situations in which the factual basis is established by asking a defendant only leading questions,” “a defendant may not withdraw

his plea simply because the court failed to elicit proper responses if the record contains sufficient evidence to support the conviction.” *Raleigh*, 778 N.W.2d at 94.

Here, Williams’s testimony showed that he was motivated by anger about being medicated and that he planned out the crime ahead of time, showing up to his parents’ home with a duffel bag of weapons and duct tape. Although Williams testified that he did not remember hitting his mother in the head with a hammer or duct-taping her hands, he remembered positioning her in a chair while she was injured and had her hands duct-taped so that she would be the first thing his father saw. He also remembered slapping her while holding a knife and hatchet, and loading a shot gun. Williams’s testimony provides evidence of planning, motivation, and the vicious nature of the attempted killing, and this evidence is sufficient to support a jury finding that Williams acted with premeditation. Williams may not withdraw his guilty plea simply because his testimony was in response to leading questions. *See Raleigh*, 778 N.W.2d at 94.

In sum, because the record contains sufficient evidence to support Williams’s conviction, there is a proper factual basis for his guilty plea.

Affirmed.